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10/532,569	04/21/2005	Bruno Teychene	37261P110	3938

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EXAMINER

BACHMAN, LINDSEY MICHELE

ART UNIT PAPER NUMBER

3734

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/532,569

Applicant(s)

TEYCHENE, BRUNO

Examiner

Lindsey Bachman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4-21-2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it contains language used in the non-amended claims. This language is also not in narrative form. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claims 1-20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification and drawings do not clearly enable one skilled in the art how to construct the invention. Further, the drawings do not accurately highlight the inventive qualities of the device. It is suggested that applicant includes an additional figure showing all of the parts so it is clear how they work together. For example, it is suggested that an additional figure is included showing how the clamp in figure 6 interacts with tags of figures 1-5. Also, a figure including the male tag panel would clarify the relationship between the male and female tag panel. Also, a cutaway side view of the tagging mechanism showing interaction of the various devices should be included.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 recites the limitations "the jaws," in line 7, "the clamp jaws" in line 8 and "the tag panel" in line 9. There is insufficient antecedent basis for this limitation in the claim. Regarding "the tag panel", there is insufficient antecedent basis because the claim does not indicate which tag panel (male or female) is meant.

8. Claim 5 recites the limitation "the attachment" in line 2-3. There is insufficient antecedent basis for the limitation in the claim.

Claim Rejections - 35 USC § 103

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1- 5, 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Destoumieux (US Patent 6,968,639) in view of Sanjurjo, et al. (US Patent Application 2003/0172560).

12. Regarding Claim 1, Destoumieux'639 teaches an ear tag for marking animals with a substance sampling system comprising a male tag panel (1) with a punch (15) going into a female tag panel (1a) which is attached to a hollow punch (6) with the aid of two jaws which comprise an applicator tool (see jaws in Figure 1, unlabeled). Regarding Claims 2 and 12, after tagging and fastening the male element to the female element, the removable prick punch (13) can be removed to collect the sample (column 2, lines 43-63 and column 6, lines 10-14). Regarding Claim 3, 6, and 15, a sampling device (hollow needle, 20), located on the edge of the applicator tool jaws, pushes the sample near shoulder 17, which is part of a removable prick punch (13) off of tip 15. Regarding

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Claim 9, 16, and 18 and further regarding Claims 6 and 15, Destomieux'639 teaches that the attachment must be connected to the hollow female head when it is removed (column 6, lines 10-14). Destomieux'639 does not teach the use of an absorbent material within the sampling device.

13. Sanjurjo'560 teaches an ear tag for marking animals that contains a piece of filter paper that absorbs blood produced during tagging. After the blood has dried, the paper can be stored for future testing (paragraph 10). The filter paper is reinforced by a removable piece of plastic (paragraph 11) and the paper is oriented perpendicular to the vertical axis of the male punch (see Figure 2, male punch unlabeled). The filter paper is attached to the reinforcing plastic which is attached along one jaw of the applicator tool (Figure 2). Furthermore (regarding Claim 10, 17 and 19), the filter paper/reinforcing plastic combination (the attachment) are fitted over the male punch portion with a slit (right side of figure 2); when this is incorporated into Destomeiux'639, as stated above, the male and female punch portions will be connected before removal, so therefore, the attachment will be fit with a slit over the female punch, as well.

14. Sanjuro'560 teaches that collecting blood samples on absorbent materials is common (paragraph 4). He also teaches that collecting blood samples while tagging avoids errors and saves money (paragraph 11). He also teaches that the filter paper can be stuck to a registration card for filing and later testing (paragraph 11). He also teaches that attaching the filter paper to a reinforcing piece of plastic allows the filter paper to be removed without being broken (paragraph 11).

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15. Therefore it would have been obvious to one skilled in the art at the time of the invention to couple a piece of absorbent material with an animal tagging device.

16. Regarding Claims 4, 5, 8, 13, and 14, the claimed limitations referring to the orientation of the absorbent material would have been obvious matters of design choice since applicant has not disclosed that having this specific feature solves any stated problem or is for any particular purpose.

17. Regarding Claims 11 and 20, Destomeiux'639 teaches marking the male and female panels with identical symbols. Furthermore, it is well known to mark animal tags because animals raised for human consumption are tagged so they can be tracked – not labeling the tags differently between each animal would render animal tagging useless because there would be no way to monitor or differentiate between animals. (See Destoumieux'639, column 1, lines 36-43.) Destomeiux'639 does not teach marking the absorbent material. Sanjuro'560 discloses marking the absorbent material (filter paper) with a printed design to identify the samples (See Sanjuro'560, paragraph 12.) It would have been obvious to one skilled in the art at the time of the invention to mark the male and female panels as well as the absorbent material.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Hendrikx (EP 1 060 662)

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsey Bachman whose telephone number is 571-272-

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6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on 571-272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lmb

GARY JACKSON
PRIMARY EXAMINER
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